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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,892	02/08/2002	Alison A. McCormick	42256	1133

27860 7590 06/16/2006

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EXAMINER

TUNGATURTHI, PARITHOSH K

ART UNIT	PAPER NUMBER
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1643

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/067,892

Applicant(s)

MCCORMICK ET AL.

Examiner

Parithosh K. Tungaturthi

Art Unit

1643

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 5.10.2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: NONE.
Claim(s) objected to: NONE.
Claim(s) rejected: 51-60.
Claim(s) withdrawn from consideration: NONE.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 5. Applicant's reply has overcome the following rejection(s): The arguments presented by the applicant overcomes the 112/second and 112/first rejections made in paragraphs 9 and 10 in pages 8-9 of the final rejection mailed in 2/10/2006.

Continuation of 11. does NOT place the application in condition for allowance because: The response filed on 05/10/2006 is carefully considered, but not considered to be persuasive, please see the response below "to each of the 5 points as addressed by the applicant":


1. The applicant states that "...whether or not Fiedler et al has a transient process for making scFv (a polypeptide compound) is not the same or even suggestive of the claimed method...". It is to be noted that Fiedler et al teach two different scFv antibodies which were expressed in plants in different plant organs and plant cell compartments have been used for the study, in addition to investigating the levels and antibody properties such as stability and antigen-binding activity (abstract, in particular). Further since Fiedler et al teach the expression of scFvs over a short period of time, Fiedler et al would still read on the claimed invention.

2. The applicant argues that "none of the references produce a correctly-folded polypeptide" and that "the linker approaches used by each of the reference either do not work or are not designed to produce the claimed polypeptide". The applicant is pointed to the teachings of Fiedler et al wherein Fiedler et al teach the properties of antibody such as stability and antigen-binding activity. Even though Fiedler et al do not teach "correctly-folded polypeptide per say", since Fiedler et al teach the stability and the functional properties of the antibody, it is obvious that the antibodies produced by Fiedler et al are correctly-folded. The applicant argues that "Hakim et al prepared the scFv with the (GGGGS)3 and... it did not work". Such arguments are found irrelevant to the current invention, because the claims are drawn to any linker that has between one and about 50 residues which is clearly taught by the references cited, Hakim et al and further Tang et al, wherein Tang et al teach scFv like binding molecules with various linkers to enhance binding properties over the natural configuration.

3. The applicants argue that "the linkers in the library have certain limitations even if a particular member of the two libraries may be the same the use of the respective linker libraries in different methods is different". In response to such arguments, the applicant is reminded that the teaching of various of linkers to produce an scFv by Tang et al is sufficient to form a prima facie obvious rejection of the claims in view of Tang et al. Tang et al use the linkers to produce antibody as claimed by the instant claims, further the limitations with claims 54-57 are taught by Tang et al.

4. The applicants argue that "claim 59 recites that the vector is transiently expressed in the cytoplasm thus, the vector is permanently in the cell's nucleus of any regenerated plant selected to produce the polypeptide...". In response to the above argument, the applicant is again reminded of the teachings of Fiedler et al teach two different scFv antibodies which were expressed in plants in different plant organs and plant cell compartments have been used for the study and further the expression of scFvs over a short period of time, Fiedler et al would still read on the claimed invention.

5. The applicant argues that "claim 60 recites allowing the vector to spread throughout the plant and that the vectors used by Fiedler et al do not spread throughout the plant...". In response to the above argument, the applicant is again directed to Fiedler et al wherein the Fiedler et al teach "that two different scFv antibodies which were expressed in plants in different plant organs and plant cell compartments", and thus would be read on the claim.


LARRY R. HELMS, PH.D.
SUPERVISORY PATENT EXAMINER